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TRAMMELL CROW RESIDENTIAL SERVICES

July 8, 1996

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541 South Orlando Avenue, Suite 200
Maitland, FL 32751
407 629 5262
FAX 407 629 4866

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Re: Restrictions on Over-The-Air Reception Devices, CS Docket No. 96-83; and Preemption of
Local Zoning Regulation of Satellite Earth Stations, IB Docket No. 95-59.

Dear Mr. Caton:

We write to request clarification regarding the possible effect on our business of the rules proposed in the above dockets. An original and 13 copies of this letter are enclosed for filing in the record. We understand that the proposed rules would invalidate "nongovernmental restrictions" that "impair" a viewer's ability to receive video programming over the air, through a wireless cable or similar system, or by direct broadcast satellite.


Trammell Crow Residential Services operates multi-unit, residential apartment buildings. Consequently, we have entered into thousands of leases with our residents. We are concerned that our leases might contain terms that are "nongovernmental restrictions" that "impair" viewing, but we do not know how the proposed rules would be applied. This uncertainty could very well create unnecessary disputes with our residents.

We would appreciate your guidance in determining which provisions of our lease contain terms that might be considered "nongovernmental restrictions" or "impairments" under the rules you propose in our circumstances.

Accordingly, we enclosed a copy of one of our representative lease forms. Please read it and let us know which terms of the enclosed form would violate either of the proposed rules.

Thank you for your assistance.

Sincerely,


Lisa Robinson
Regional Manager

Enclosures

APARTMENT LEASE AGREEMENT

THIS APARTMENT LEASE AGREEMENT (the "Lease") is made by and between TRAMMELL CROW RESIDENTIAL SERVICES - FLORIDA (hereinafter referred to as "Manager") acting pursuant to express written authority granted to Manager by the Owner of the Apartment Community as described on Schedule "A" attached hereto and made a part hereof, and Resident whose name(s) and address(es) are fully set forth on Schedule "A" (hereinafter collectively referred to as "Resident", whether one or more).

1. **Demise.** In consideration of the full payment by Resident of the rental amounts required under this lease when the same shall become due and payable and the performance of all of the other terms and conditions of this Lease, Manager hereby leases to the resident the premises described on Schedule "A" (the "Apartment").

2. **Move-In Date.** The proposed move-in date is set forth on Schedule "A". If the move-in date is other than the first day of a month, rental shall be due in advance from the move-in date until the end of the month of move-in, in the amount set forth on Schedule "A". Thereafter, the rent shall be payable as set forth in paragraph 4 of this lease agreement. Resident's possession of the premises shall start on the move-in date. The fact that Resident occupies the premises prior to the term of this Lease as defined in Paragraph 3 below shall in no way affect the term of this Lease. Performance of all obligations, covenants and conditions of this Lease shall be due from both Manager and Resident as of the move-in date.

3. **Term.** The term of this Lease shall be as described on Schedule "A". If the actual beginning of occupancy of the premises is delayed because of construction or the prior resident continuing to occupy the premises, or for any reason beyond the direct control of Manager, Manager and/or owner shall not be liable to Resident in any respect from such delay and this Lease shall remain in force, subject to the following: (1) Resident will not have to pay rent for each day during such delay; and (2) Resident may terminate this Lease by giving notice in writing to Manager no later than the third day of such delay, whereupon Resident shall be entitled to a refund of Resident's security deposit. Such conditions shall not apply to cleaning or repair days.

4. **Rent.** The Resident agrees to pay to Manager in advance at the commencement date of this lease and on the first day of every consecutive calendar month hereafter, by personal check, money order or cashier's check, the monthly rental amount set forth on Schedule "A". It is agreed that at no time shall cash be accepted by Manager for payment of rent. The rental reserved hereunder shall be payable without set-off, deduction or demand. Rent shall be payable at the offices of the Manager as set forth on Schedule "A", or at such other place or places as Manager may at any time hereafter designate in writing to Resident. If a rental payment is not paid by the 5th of the month, Resident shall pay a late charge of \$ _____ on the 6th of the month and an additional late charge of _____ per day for every day thereafter in which the full rental amount plus any late and/or other charges remain unpaid. All such late charges and other amounts due Manager as set forth herein and/or by Addendum hereto are deemed rent for purposes of this Apartment Lease Agreement. Manager in Manager's sole discretion may require Resident to pay rent, including any fees due to manager, by cashier's check or money order if Resident tenders same after the 5th of the month. If Resident's check fails to clear the bank, an additional service charge of \$ _____ will be assessed. If Resident gives Manager one check that is returned for nonpayment, thereafter a future rent and redemption of any such returned check shall be payable by cashier's check or money order only. In addition to all other amounts due Manager from Resident, Resident shall pay all applicable tax, if any, with each installment of rent payable under this Lease. It shall be irrebuttably presumed, for purposes of this Apartment Lease Agreement, that Resident has not paid rent or any of the charges unless Resident can produce a canceled check or money order proving that rent has been paid.

5. **Pets/Non-Refundable Pet Fee.** Resident shall not keep or have any animal, bird or pet of any kind in the Apartment, or on or about the grounds of the Apartment Community without the express prior written consent of Manager, and then only on such terms and conditions as Manager may require. Manager reserves the right to refuse to allow Resident to keep or have any animal, bird or pet of any kind. In addition to the rental and the Security Deposit provided for herein, if written consent is received, Resident agrees to pay a one-time non-refundable pet fee in the amount set forth on Schedule "A" for each animal, bird or pet of any kind that is to be kept in or about the premises or elsewhere within the Apartment Community. In addition thereto, Resident shall be required to pay an additional security deposit as determined by Manager. This fee and security deposit shall be payable upon signing the Lease or prior to bringing the animal into the premises or Apartment Community.

6. **Non-Refundable Redecorating Fee.** In addition to the rent and the Security Deposit provided for herein, Resident agrees to pay in advance a one-time fee in the amount set forth on Schedule "A" as a charge for redecorating the premises upon the premises being vacated by Resident. This fee is to cover Manager's costs for redecorating the apartment to compensate for normal wear and tear. This fee in no way releases Resident from the obligation of leaving the premises in as good condition as when received by Resident, reasonable wear and tear excepted.

7. **Utilities.** Manager agrees to furnish at Manager's expense only the services checked off below:
_____ Pest Control _____ Water _____ Sewer _____ Garbage Collection

All other utility services acquired by Resident shall be provided to the premises at Resident's sole expense and on a separate metering and/or billing basis either directly from the utility provider or on a submetering, square footage or other billing basis as determined by Manager. Resident agrees to pay all utility charges (including utility deposits) assessed by utility companies (or Manager in the case of utilities billed to Resident by Manager) in connection with the use of all utility services provided to the premises which are separate metered and/or billed to Resident during the term of this Lease, as such term may be extended, or the period of occupancy of the premises by the Resident, whichever is longer. Furthermore, if the Resident fails to pay all utility charges assessed by utility companies in connection with the use of utility services for which Resident has herein agreed to pay, and if Manager is assessed by the utility company for these utility services, then Manager may at the sole discretion of Manager pay these utility assessments to such utility company at demand and immediate repayment of same from Resident as additional rent pursuant to paragraph 4 of this apartment lease agreement as well as subtract from Resident's Security Deposit upon termination of the Lease all amounts so assessed by Manager that remains unpaid. In the event Resident becomes delinquent in the payment of utility charges which are billed to Resident by Manager upon not less than twenty-four (24) hours prior notice to Resident, Resident agrees that Manager may cause any utility services to the premises which are included within the rent (or which are covered by the unpaid utility billings) to be terminated, without liability of any kind or nature to Manager. Manager shall in no event be liable for an interruption or failure of utility services furnished by Manager to the premises or any damages directly or proximately caused thereby, the only obligation of Manager being reasonable diligence in Manager's efforts to restore such services. Upon commencement of the term of this Lease, Manager shall furnish light bulbs and tubes of prescribed wattage for light fixtures located in the premises; thereafter light bulbs and tubes shall be replaced by Resident with similar light bulbs and tubes as of the prescribed wattage, at Resident's sole expense.

8. **Use and Occupancy of Premises.** The premises shall be used by Resident for residential purposes only. The premises will be occupied only by those persons listed on Schedule "A" as residents or occupants on Schedule "A". Any additions or other changes to the list of residents must be approved in writing by Manager in advance.

9. **Acceptance and Care of Premises.** Resident has examined and accepted the premises AS IS. No repairs or alterations to the Apartment shall be required unless specifically set forth herein, or elsewhere in a writing signed by Manager. Resident shall have the right to report, in writing, defects and damages to Manager within seventy-two (72) hours after Resident is given possession of the premises. Such damages and defects shall be listed on the Move-In Inspection Form attached hereto and made a part hereof and will be signed by both the Resident and Manager, upon inspection of the premises to confirm the presence of such defects and damages. Defects and damages not so timely reported to Manager shall be presumed to have first occurred during Resident's occupancy of the premises. Resident shall use reasonable diligence in care of the premises, and shall at all times:

- (1) Comply with all obligations imposed upon Resident as a resident by applicable provisions of building, housing and health codes;
- (2) Keep the premises clean and sanitary; remove from premises all garbage in a clean and sanitary manner;
- (3) Use and operate in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators, if any;
- (4) Not destroy, deface, damage, impair or remove any part of the premises or property located therein or elsewhere in the Apartment Community belonging to the Manager or the Owner of the Apartment Community nor allow any person to do so;
- (5) Conduct himself or herself, and require other persons on the premises with his or her consent to conduct themselves, in a manner that does not disturb the Resident or neighbors or constitute a breach of the peace.

Alterations, additions and improvements to the premises by Resident may only be made after receipt of the prior written consent of same by Manager. If such approved changes are made they shall become the property of Manager and shall be surrendered with the premises at the expiration or termination of this Lease or at the sole discretion of Manager. The apartment shall be returned to its original condition at the sole expense of Resident. No holes will be drilled into the walls, woodwork, or floors, and no waterbeds or other installations (including citizens band radio antennas) or wall phones or stringing of wires, or change of locks or additional locks shall be permitted except with Manager's prior written consent. Manager may not withhold consent to the installation or maintenance of a waterbed on the premises by Resident, provided applicable building codes are not violated, and further provided that Resident carries, during the full term of lease, flotation bedding system insurance (as is standard in the industry) in an amount deemed reasonable by Manager to protect the Owner of the Apartment Community against loss from personal injury and damage to the premises or the Apartment Community. Any such policy shall name the Owner of the Apartment Community as Loss Payee. Resident shall provide Manager with proof of such insurance, if applicable, within seven (7) days of receipt of written request therefor. Resident's failure to so provide proof of insurance shall be a material breach of this lease. Notwithstanding anything contained herein to the contrary, Resident shall have the right to obtain franchised or licensed cable television service as is provided by Florida law. Resident will not remove Manager's fixtures, furniture, and/or furnishings from the premises for any purpose.

10. **Early Termination.** Resident may cancel Resident's obligation under this Lease, without breaching same, by delivering to Manager in writing a sixty (60) day notice of intention to cancel this Lease and by paying Manager for same, in accordance with the following: Such notice will be effective sixty (60) days from the date it is given. The notice must be accompanied by full payment of a cancellation fee as described on Schedule "A", advance payment of the rent due for the sixty (60) day notice period, plus reimbursement for any such concessions, as described on Schedule "A". Timely notice and payment and surrender of the premises will release Resident only from any further obligations to pay rent accruing at the date the cancellation is effective. All other terms of the Lease must be complied with. Manager shall retain all remedies for non-compliance with the Lease, and Resident shall be liable for any damages for non-compliance.

11. **Holding Over.** UNLESS ANOTHER LEASE IS SIGNED BY THE PARTIES HERETO OR UNLESS WRITTEN NOTICE OF TERMINATION IS GIVEN BY EITHER PARTY SIXTY (60) DAYS BEFORE EXPIRATION OF THIS LEASE, THIS LEASE SHALL BE AUTOMATICALLY RENEWED ON A MONTH-TO-MONTH BASIS WHICH SHALL REQUIRE NOT LESS THAN SIXTY (60) DAYS' WRITTEN NOTICE OF TERMINATION PRIOR TO THE NEXT RENT DUE DATE IN ORDER TO TERMINATE THE MONTH-TO-MONTH TENANCY. THE RESIDENT IS RESPONSIBLE FOR RENT PAYMENT DURING THE SIXTY (60) DAY NOTICE PERIOD, AS WELL AS DURING ANY MONTH-TO-MONTH RENTAL. IN THE EVENT THIS LEASE IS RENEWED ON A MONTH-TO-MONTH BASIS THE RESIDENT SHALL PAY RENT TO MANAGER IN AN AMOUNT EQUAL TO THE MARKET RENT CHARGED BY MANAGER FOR APARTMENTS SIMILAR TO THE APARTMENT AT THE TIME OF CONVERSION. THE MONTH-TO-MONTH TENANCY PLUS AN ADDITIONAL MONTH-TO-MONTH FEE OF \$ _____ ALL SUCH AMOUNTS ARE DEEMED RENT FOR PURPOSES OF THIS LEASE.

12. **Failure to Vacate After Notice.** If Resident or Manager gives notice of termination of the Lease in accordance with paragraph 11 hereinabove, and Resident fails to completely vacate the Apartment prior to the expiration of the notice, and/or if Resident otherwise continues in possession of the Apartment after the expiration or termination of the Lease without the written permission of Manager, Resident shall be liable, in addition to all other damages provided for under the Lease, and/or Florida law, for double the daily rent based on a proration of the monthly rental provided for in the Lease, for each day Resident so continues in possession of the premises.

13. **Rules and Regulations.** Resident, all occupants of the Apartment, Resident's family, guests, invitees and agents shall comply with all rules and regulations now hereafter promulgated by Manager including, without limitation, the printed rules and regulations, if any, attached hereto and incorporated herein by reference. Resident agrees to abide by all federal, state and local laws and ordinances and agrees not to engage in any activity in or about the Apartment and the Apartment Community, including common areas, of an illegal nature, purpose or intent. It is agreed and understood by Resident that the Manager may, in its sole discretion, hereafter, reasonably amend or alter the attached rules and regulations of the Apartment Community, without the prior consent of Resident, and that Resident agrees to be bound by and comply with any such amended rules and regulations after receiving written notice of said amendment(s). All subsequent amendments to the rules and regulations of the Apartment Community shall be deemed incorporated in this Lease by reference immediately upon the delivery of same to Resident by Manager by mail or actual delivery, or by posting. Resident shall be responsible for the conduct of Resident, and all occupants

the Apartment, as well as Resident's agents, invitees and/or guests. In addition to all other rules and regulations promulgated herein and elsewhere, Resident covenants that Resident, occupant(s), Resident's family, agent(s), invitee(s), and/or guest(s) shall not be disorderly, boisterous, and shall not disturb the rights, comforts and conveniences of the Manager, its agents, representatives and/or employees nor of other residents, their guest(s) or invitee(s) at the Apartment Community. If any occupant(s), guest(s) and/or invitee(s) of Resident(s) and/or Occupant(s) violates any provision of this Lease, the Resident shall be deemed to have violated this Lease for purposes of terminating this Lease if manager so elects. Resident hereby agrees to be personally responsible to manager and/or Owner for the costs and expenses incurred by Manager and/or Owner as a result of any damage to the Apartment and/or the common grounds and/or Manager's property, real or personal, caused by Resident, occupant(s), and/or agent(s), guest(s) and/or invitee(s) of Resident or occupant(s).

14. Reimbursement by Resident. Resident agrees to reimburse Manager promptly in the amount of the loss, property damage, or cost of repairs or services (including plumbing trouble) to the Apartment and/or the Apartment Community caused by the intentional act, negligence or improper use by Resident, occupants, Resident's and/or occupants agents, invitees, or guests. Acceptance of money from Resident shall not act as a waiver by Manager of Manager's rights to pursue any and all remedies available to Manager under the circumstances. Resident shall also be responsible for any damage resulting from windows or doors left open. Such reimbursement shall be due immediately upon demand by Manager. *Manager's failure or delay in demanding damage reimbursements, late payment charges, returned check charges, or other sums due from Resident, shall not be deemed a waiver thereof* and Manager may demand same at any time, including move-out. **IT IS UNDERSTOOD AND AGREED THAT MANAGER MAY, UPON TERMINATION OF THE LEASE, DEDUCT UNPAID RENT, DAMAGE REIMBURSEMENTS, UTILITY CHARGES, LATE PAYMENT CHARGES AND/OR RETURNED CHECK CHARGES, OR ANY PORTIONS THEREOF, FROM RESIDENT'S SECURITY DEPOSIT WITHOUT WAIVER OF ANY OTHER RIGHTS OR REMEDIES OF MANAGER, ALL IN ACCORDANCE WITH THE TERMS OF THIS LEASE.**

15. Manager's Liability. *Manager shall not be liable to Resident, or Resident's family, agents, guests or invitees, for any damages or losses to person or property caused by other residents of the Apartment Community or other persons.* Resident agrees to indemnify and hold Manager harmless from and against any and all claims for damages to property or person arising from Resident's use of the premises, or from any activity, permitted or suffered by Resident on or about the premises. Manager shall not be liable for personal injury or damage or loss of Resident's personal property (furniture, jewelry, clothing, etc.) from theft, vandalism, fire, water, rain, storms, smoke, explosions, sonic booms or other cause whatsoever unless the same is due to the active negligence of Manager. Resident hereby agrees that Resident is to obtain and maintain renter's insurance for the length of residency to insure for personal injury liability and personal property brought onto the premises by Resident, occupant, and/or Resident's or occupant's family or guests. *Failure to obtain this insurance is a breach of this Lease and Resident acknowledges that any injury within the premises or damage or loss to personal property is the responsibility of the Resident.* If any of Manager's employees and/or agents are requested to render any services such as moving automobiles, handling of furniture, cleaning, signing for or delivering packages, or any other service not contemplated in this Lease, and such services are in fact rendered, such employee and/or agent shall be deemed the agent of Resident regardless of whether payment is arranged for such service, and Resident agrees to indemnify and hold Manager harmless from any and all losses suffered by Resident or other person(s) in any of these circumstances.

16. Damage or Destruction of Premises. In the event of damage or destruction to the premises by fire, water, or other hazard, or in the event of malfunction of equipment or utilities, Resident shall immediately notify Manager. If the damages are such that occupancy of the premises as a whole can be continued, Manager shall make repairs as needed with reasonable promptness and rent shall not abate during the period of such repairs. If only part of the premises is rendered unusable by the damage or destruction, the Resident may vacate *only that portion of the premises rendered unusable and Resident's rent shall be reduced by the fair market value of the unusable portion of the premises during the period of partial vacancy*, provided the damage or destruction was not caused by Resident, and/or occupant, guest, agent or invitee of Resident or occupant, but in all other respects the terms of provisions hereof shall continue in full force and effect. In either event, if the damages resulted from the wrongful or negligent acts of Resident, Manager may pursue all of its remedies against Resident provided under Florida law. If, in Manager's opinion, the premises are so damaged or destroyed other than by the wrongful or negligent acts of the Resident so as to substantially impair Resident's enjoyment of the premises, the Lease may be terminated by either Manager or Resident in which event Resident shall immediately vacate the premises. *In the event the premises are damaged or destroyed so as to substantially impair Resident's enjoyment of the premises due to wrongful or negligent acts of Resident, Manager may, in addition to Manager's other remedies under Florida law, terminate this Lease, in which event Resident shall immediately vacate the premises, or without terminating the Lease, require Resident to accept a comparable apartment unit in the Apartment Community for the remaining term of the Lease, in which event all of the terms and provisions of this Lease shall continue in full force and effect in relation to such comparable apartment unit, and Resident shall immediately vacate the Apartment and take possession of such comparable apartment unit.*

17. Right of Entry. Resident hereby grants to Manager the right to enter upon the Apartment at any time without notice for the preservation of the premises, to inspect the premises, to make necessary or agreed repairs, decorations, alterations or improvements, to supply agreed services, to exhibit the dwelling unit to prospective or actual purchase mortgages, residents, workmen or contractors, or for any other reasonable business purpose connected with the operation of the Apartment Community.

18. Manager's Obligations. Manager agrees to maintain all common areas of the Apartment Community (excluding the Apartment) in a clean and sanitary condition, comply with the requirements of applicable building, housing and health codes, to make all reasonable repairs (subject to notification by Resident of the need for such repairs) to Resident's obligation to pay for damages caused by Resident, or Resident's family, guests, invitees or agents), and to comply with all applicable state and local laws. Notwithstanding the foregoing, Manager is not responsible to Resident for conditions created or caused by the wrongful or negligent acts or omissions of Resident, the Resident's family, agents, invitee or employees. Manager's failure to fulfill the agreements contained herein within a reasonable period of time shall not affect Resident's obligation to promptly pay the rent as and when the same shall become due and payable under this Lease, nor give Resident any right of abatement or withholding or escrowing of rental payments, except as may be otherwise provided under Florida law.

19. Default by Resident. If Resident fails to pay rentals or additional rents when due, or if Resident fails to reimburse Manager for damages, repairs or plumbing services when due under this contract, or if Resident or other occupants or guests of this Apartment materially and/or repeatedly violate this contract or applicable state and local laws, or if Resident abandons the Apartment, then Manager or Manager's representative may terminate Resident's right of occupancy by giving Resident at least three-day's notice in writing. Notice may be by mail, posting or personal delivery to Resident's Apartment. Such termination does not release Resident from liability for future rentals. If any amounts due Manager are delinquent, Manager shall not be obligated to continue utilities which are furnished and paid for by Manager. *Resident's absence from the premises for sixteen (16) consecutive days while all or any portion of the rent is delinquent shall be deemed an abandonment of the premises.*

In order to clear an Apartment after abandonment, surrender or eviction, Manager's representative may enter the premises and remove and store all property of every kind found therein. All of Resident's property on the premises is hereby subject to a contractual lien as well as all other liens available to Manager at law or in equity. There shall be no release or disposition of any of the foregoing property except pursuant to the law. Manager may terminate this lease for other violations of this lease and the laws of the state in accordance with Chapter 83, Part II of the Florida Statutes. *Once Manager has the right to take possession of the premises under this Paragraph, Manager may, without further notice or demand, re-enter the premises and remove all persons and property therefrom, without prejudice to any other legal rights which Manager may assert under the terms and provisions hereof.* Such right of re-entry and removal shall be in addition to Manager's right after Resident's abandonment of the premises to remove all property of Resident from the premises, which removal will be in derogation of the continuing validity of the Lease. If Manager does not elect to terminate the Lease, Upon Manager re-entering and taking possession of the premises after abandonment, at the option of Manager, Manager may elect same for the remainder of the term for the best rental which Manager may be able to attain without otherwise terminating the Lease. *Resident's liability of Resident hereunder, and in such event, Resident shall remain liable to Manager for any deficiency in the rent collected for the balance of the term of this Lease.* In the event Manager terminates this Lease, and re-enters and takes possession of the premises, or if Manager re-enters and takes possession without termination of the Lease, and in either event removes the personal property of Resident therefrom, Manager shall have the right to place said property of Resident in storage, at Resident's expense, and may pursue any other legal remedies which Manager may have with respect to its lien on any such property of Resident. Notwithstanding the foregoing, Manager may in Manager's sole discretion otherwise dispose of the property in accordance with Chapter 83, Part II of the Florida Statutes or otherwise in accordance with Florida Law. In addition to all other remedies provided by law, Resident agrees to compensate Manager for all reasonable costs and expenses necessary to enforce this Lease and any rights or remedies of Manager provided by law, in equity or by provisions hereof, and to collect the rent or damages for breach of this Lease, including, but not limited to, all court costs, reasonable attorney's fees, and/or fee paid any collection agency incurred in connection therewith, as well as all reasonable expenses necessary for the removal of personal property therefrom and to the re-letting or attempted re-letting of the premises which shall include, but not be limited to, the costs of minor repairs and replacements, advertising fees, brokerage fees and other expenses caused by Resident's breach of any of the terms and provisions of this Lease.

20. Liquidated Damages. In addition to all other damages to which Manager is entitled as set forth herein and/or as called for in Chapter 83, Part II of the Florida Statutes, in the event that Resident breaches this lease by failing to pay rent when due and/or is evicted for any breach of this lease and/or surrenders or abandons possession of the subject Apartment prior to the natural termination date of this lease, without fully exercising the cancellation provision contained herein in paragraph 10, the Resident shall be responsible to Manager for damages for unpaid rent, late charges, attorney's fees, and/or fee paid any collection agency, costs and other special and general damages appertaining thereto. It is hereby expressly recognized and acknowledged by Resident that no exact measure of the loss and damage which may be caused to Manager, its successors and/or assigns, resulting from breach by Resident of the covenants contained in this lease agreement, can be determined. For purposes of liquidating such damages, other than for damage to the subject premises above and beyond normal wear and tear, NSF charges and other special damages, attorney's fees and costs, it is agreed that in the case of any breach by the Resident of the covenants contained herein the damages for arrears of rent and late charges caused shall be and are hereby fixed, liquidated and determined to be equal to the rent and late charges accruing up through the end of the month in which Resident vacates the Apartment plus an additional amount equal to rent and late charges for two additional months after the date of breach. The Manager, its successors and assigns are hereby given the right to recover said damages from Resident by use of any appropriate legal means. These liquidated damages, in addition to all other amounts accruing under the lease, including, without limitation, NSF check charges, utility charges and/or charges for the cost of repair and cleaning of the subject premises for wear and tear, damages above normal wear and tear, attorney's fees and costs, and collection expenses and costs.

21. Liens or Sales. Manager or Owner of the Apartment Community may encumber the premises and/or the Apartment Community by mortgage(s) and/or deed(s) and any such mortgage(s) or deed(s) of trust so given shall be a lien on the land and buildings superior to the rights of the Resident herein. In the event that all or any part of the Apartment Community has been financed under a tax exempt bond issue of the Florida Housing Finance Agency, Resident hereby subordinates its rights, title and interest in the premises, its fixtures and equipments affixed thereto, to the rights and interests of said Agency and its successors and assigns. Foreclosure of any mortgage or sale under a deed of trust shall constitute a constructive eviction of Resident and Resident agrees to attorn to the purchaser at such foreclosure or sale as if this Lease was by and between Resident, as tenant, and purchaser, as landlord. Any sale of the Apartment Community or any part thereof shall not affect this Lease or any of the obligations of Resident hereunder, but upon such sale Manager and the prior Owner of the Apartment Community shall be released from all obligations hereunder and Resident shall look solely to the then-owner of the Apartment Community for the performance of the duties of "Manager" hereunder from and after the date of such sale.

22. Resident Information. If Resident has supplied information to Manager by means of a rental application or similar instrument, Resident covenants that Resident knowingly and voluntarily gave all such information, and if such information proves to be false or misleading in any material respect, Resident shall have committed a material breach of this Lease that Resident shall not be permitted to cure. In cases of tax exempt bond financed properties Resident hereby certifies the accuracy of the statements made in the Certification of Tenant Eligibility and Income Verification (the "Certificate") previously executed, and further agrees that the family income, family composition and other eligibility requirements set forth in the Certificate shall be deemed substantial and material obligations of Resident's tenancy; that Resident will comply promptly with all requests for information with respect thereto from the Manager, the Owner of the Apartment Community or any Mortgagee; that Resident's failure to provide accurate information in the Certificate or Resident's refusal to comply with a request for information with respect thereto shall be deemed a material default by Resident which Resident shall not be permitted to cure; and that Resident's failure to furnish accurate and current information on the Certificate could subject Resident to civil liability. In the event that all or any part of the Apartment Community has been financed under a tax exempt bond issue of the Florida Housing Finance Agency, Resident hereby acknowledges and agrees that the Manager and/or Owner of the Apartment Community are not agents of the Florida Housing Finance Agency. Resident further agrees that this Lease shall become null and void if it becomes known to the Owner of the Apartment Community or Manager that continuation of Resident's occupancy will result in the interest in any tax-exempt bonds utilized to finance the construction of the Apartment Community being subject to federal income taxation, or in a violation of the state statute permitting the issuance of such bonds.

23. Subletting and Successors. Subletting of the premises is not permitted. Assignment of this Lease is not permitted. The terms and conditions contained in this Lease shall be binding upon and inure to the benefit of Manager and Resident and their respective heirs, executors, administrators, personal representatives, successors and assigns.

24. **Notices.** Any notice or document required or permitted to be delivered under this lease shall be deemed to be delivered, whether actually received or not, when deposited in the United States mail, postage prepaid, as certified or registered mail addressed to Resident at Resident's residence address at the premises (or if Resident's residence address changes to such other residence address as Resident may at any time designate by written notice to Manager), and to Manager at the office address of the Apartment Community (or at such other address or addresses as Manager may at any time or from time to time designate in writing to Resident). Personal delivery of any such notice by Manager or Resident at the above address shall be deemed effective delivery hereunder. Notwithstanding anything herein to the contrary, all notices to Resident required pursuant to part II of Chapter 83 of the Florida Statute shall be served in accordance with said Part II of Chapter 83.

25. **Severability.** If any clause or provision of this lease is illegal, invalid or unenforceable under present or future laws effective during the term, then it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the parties to this Lease that in lieu of each clause or provision that is illegal, invalid or unenforceable, there be added as a part of this Lease a clause or provision as similar in terms or effect to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

26. **Attorney's Fees.** In any action brought to enforce the provisions of this Lease or to recover damages arising out of a party's breach of any provisions of this Lease, the prevailing party may recover reasonable court costs, including attorney's fees, from the non-prevailing party. In addition to the foregoing, if any amount due Manager by Resident pursuant to this lease or otherwise is turned over to a collection agent for collection, the Resident agrees to pay in addition thereto all fees, whether contingent or otherwise, and cost incurred by Manager, its successors and/or assigns thereby.

27. **Radon Gas.** Radon gas is a naturally occurring radioactive gas that, when it is accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit. This disclosure statement notification is in compliance with Florida Statute 404.056(7).

28. **Security Deposit.** Upon signing this Lease, Resident shall deposit with Manager the total sum set forth in Schedule "A" as a Security Deposit to be held pursuant to the conditions provided in this Lease and incorporated herein by reference for all purposes. Such Security Deposit shall include any premises deposit, pet deposit or security deposit and in addition to the amounts which Resident must pay for initial rent and non-refundable fees.

(1) Refund of Security Deposit. Manager agrees to refund the Security Deposit upon satisfaction of all of the following conditions, except as modified by exercise of the cancellation option contained in Resident's Lease or the other provisions of said Lease.

- A. Complete vacancy of the entire premises by Resident on or before the date specified in the required written 60-day notice of cancellation of Resident's lease from Resident to Manager or Manager to Resident.
- B. Expiration of the term of the Lease, or termination of the Lease in accordance with the express provisions thereof.
- C. Payment by Resident of all rental and other amounts required under the Lease.
- D. Thorough cleaning of the premises, including but not limited to all kitchen appliances (including without limitation refrigerator, oven, range, dishwasher), baths, closets, storage areas, patios/balconies, etc., so as to be in the same condition as same were in on the commencement date of the term of the Lease, normal wear and tear excepted.
- E. An absence of defects in or damage to the premises, whether caused by Resident, pets, or otherwise, unless included on the written list of damages and defects (the move-in inspection form) as set out in this lease.
- F. Performance by Resident of all of the other covenants and obligations of Resident under the Lease, from the date of commencement of the Lease up to and including the date of expiration or termination of the term of the Lease, or up to and including the final day of the Lease, or up to and including the final day of the 60-day notice period whichever is longer.
- G. Observance and performance by Resident of all rules and regulations pertaining to Resident under the Lease, including, without limitation, those rules and regulations pertaining to pets.
- H. PROVISION BY RESIDENT TO MANAGER OF SIXTY DAYS' WRITTEN NOTICE PRIOR TO THE DATE OF EXPIRATION OR
- I. Provision by Resident to Manager in writing of Resident's forwarding address.

(2) Deductions.

A. By execution of this Agreement, Resident acknowledges receipt of the following copy of the provisions of Section 83.49(3), Florida Statutes (1993), which provides as follows:

"(3) (a) Upon the vacating of the premises for termination of the lease, the landlord shall have 15 days to return the security deposit together with interest if otherwise required, or in which to give the tenant written notice by certified mail to the tenant's last known mailing address of his intention to impose a claim on the deposit and the reason for imposing the claim. The notice shall contain a statement in substantially the following form:

"This is a notice of my intention to impose a claim for damages in the amount of _____ upon your security deposit, due to _____"

It is sent to you as required by section 83.49(3), Florida Statutes. You are hereby notified that you must object in writing to this deduction from your security deposit within 15 days from the time you receive this notice or I will be authorized to deduct my claim from your security deposit. Your objection must be sent to _____

If the landlord fails to give the required notice with the 15-day period, he forfeits his right to impose a claim upon the security deposit."

(b) Unless the tenant objects to the imposition of the landlord's claim or the amount thereof within 15 days after receipt of the landlord's notice of intention to impose a claim, the landlord may then deduct the amount of his claim and shall remit the balance of the deposit to the tenant within 30 days after the date of the notice of intention to impose a claim for damages.

(c) If either party institutes an action in a court of competent jurisdiction to adjudicate his right to the security deposit, the prevailing party is entitled to receive his court costs plus a reasonable fee for his attorney. The court shall advance the cause on the calendar."

B. Manager agrees to refund the Security Deposit to Resident, after deducting therefrom all damages or charges for which Resident is legally liable under the Lease or as result of breaching the Lease in accordance with the provisions of Florida Law.

Any deduction shall be made from the entire Security Deposit (premises deposit and pet deposit) regardless of whether the damage or other charges have been caused by the pet or the Resident.

(3) Withholding of Rent. Resident acknowledges that Resident shall have no right to apply any portion of the Security Deposit to rent due and payable under the Lease, and that the entire monthly rent shall be paid on or before the due date each month during the term of the Lease, including the last month of occupancy.

(4) Move-Out Procedures. When Resident moves out of the premises, an inspection of the condition of same shall be made after all of the personal effects of Resident have been removed. Resident should accompany Manager during said inspection to help resolve any problems that may arise. Failure of Resident to do so shall constitute concurrence by Resident in Manager's assessment of charges for damages or cleaning. After inspection by Manager, appropriate charges will be assessed against Resident by Manager for any missing items, damages or repairs to the premises, or its contents (normal wear and tear excepted); insufficient light bulbs; scratches, burns or holes in the walls, doors, floors, draperies, carpets and/or furniture; and for cleaning the premises (including all kitchen appliances). A reasonable charge for each unreturned key (including mail-box key) will be made, and a reasonable charge of no less than \$50.00 for replacing locks shall be assessed if all door keys to the premises are not returned to Manager.

(5) Failure to Occupy Premises. If, for any reason except for delay caused by construction, the holding over of a prior resident, or disapproval of the rental application, the undersigned does not take occupancy of the premises as provided for in the Lease, damages will be assessed against the Security Deposit for damages from Resident's breach of this Lease and Manager shall have all other rights and remedies available to it under the Lease.

(6) Retention of Security Deposit Funds. Manager hereby declares and gives notice that all monies taken as security deposits are held in the _____

_____ Commingled with the funds of the general apartment bank account and will accrue interest at the rate of 5% per annum.

_____ Not commingled with the funds of the general apartment bank account but are maintained in a separate interest bearing account for the benefit of the residents. Accordingly, all security deposits will accrue interest at the rate of 5% per annum simple interest or 75% of average annualized interest rate payable on account of which method of computing interest is landlord's option.

_____ Not commingled with the funds of the general apartment bank account but are maintained in a separate NON-interest bearing account for the benefit of the residents. Accordingly, all security deposits will NOT accrue interest.

29. **Counterparts.** This lease is executed in duplicate, with one copy to be furnished to Resident and the other copy to be retained by Manager.

30. **Definitions:** "Manager" as used in this lease shall include the owner(s) of the property, its agents, representatives, successors and assigns. "Resident" shall include Resident, his heir and representatives. "Manager" and "Resident" include male and female, singular and plural, corporation, partnership and/or individual, as may fit the particular parties.

31. **Non-Waiver:** Failure of Manager to insist upon strict, timely compliance by Resident with any term(s) of this agreement shall not amount to nor be construed as nor otherwise constitute a waiver by Manager of Manager's right thereafter to insist upon strict and timely compliance by Resident of any and all terms and conditions of this agreement including, without limitation, any term(s) that may not have been enforced strictly by Manager previously. Acceptance by the Manager of rent after knowledge of any breach of this lease by the Resident shall not be a waiver of the Manager's right nor construed as an election by the Manager not to enforce the provisions of this lease pursuant to such a breach. Managers' failure or delay in demanding damage reimbursement, late payment charges, returned check charges, or other sums due Manager, shall not be a waiver of Manager's right to insist on payment thereof. Manager may demand same at any time, including move-out and thereafter.

32. **Entire Agreement:** This agreement, the rental application and any attached appenda constitute the entire agreement between the parties and no oral statements shall be binding. This Agreement comprises all terms, conditions and agreements of the Parties with respect to the subject matter hereof, superseding all prior arrangements or agreements, an except as provided in the rules and regulations paragraph hereinabove, may not be altered or amended except in writing and signed by authorized representatives of each Party hereto.

33. **Law Governing:** This Agreement shall be construed by and enforced with, and the validity and performance hereof shall be governed by, the laws of the State of Florida.

34. **Construction of Lease:** This Agreement shall not be construed more strongly against any party hereto regardless of who was more responsible for its preparation.

35. **Representations:** The Resident hereby acknowledges and agrees that on no time during the course of discussions and/or negotiations leading up to and including the time of execution of this lease did any representative, agent, or employee of the Manager make any representation(s), engage in any discussion(s) of the lease, or otherwise communicate with the Resident anything, that in any way whatsoever contradicts or alters or amends any written term and/or condition of this lease agreement, nor did the Manager, any representative agent and/or employee of the Manager make any statement(s) or communication(s) or representation(s) of any nature whatsoever that supplement or in any way whatsoever amend or add any terms or provisions to this lease as written. The Resident hereby acknowledges that the Resident has read this lease in its entirety and is fully informed of all contents hereof.

36. **Other.**